



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: FEB 27 2014

Office: KENDALL FIELD OFFICE

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Kendall Field Office Director, Miami, Florida, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the field office director will be withdrawn and the application declared unnecessary.

The applicant is a native and citizen of Venezuela who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. The record reflects that with her Application to Adjust Status (Form I-485) the applicant submitted a fraudulent Form I-94 to establish lawful admission to the United States.¹ The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her lawful permanent resident mother.

In a decision dated June 23, 2013, the field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated June 23, 2013.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the director's decision did not conform to case law and precedent. With the appeal counsel submits a brief, a copy of a Form I-94 belonging to the applicant, and a previous affidavit from the applicant. The record also contains medical documentation for the applicant's mother, a statement from the applicant's mother, letters of support from friends, and financial documentation.

The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a

¹ In an affidavit submitted to USCIS the applicant stated that she had never used the false I-94, but because she had been told it was a legal document, she had sent it with her Application to Adjust Status. The applicant stated that when she learned the document was not valid she located the original I-94 that she had been given on September 29, 2000, when she entered the United States as a B-2 visitor.

United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The field office director determined that the Form I-94 submitted with the applicant's Application to Adjust Status (Form I-485), filed on November 22, 2009, to show lawful admission into the United States was fraudulent, and therefore found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation.

In her brief counsel states that the Form I-94 erroneously submitted by the applicant is not material as she did not then procure an immigration benefit through that action and that she was already the beneficiary of an approved visa petition filed by her lawful permanent resident mother.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I. & N. Dec. 408 (BIA 1998); and *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The AAO finds that the applicant's submission of a fraudulent I-94 was not material. Had the applicant submitted the correct I-94 with her Application to Adjust Status she would have been eligible for adjustment of status based on the true facts. By submitting a fraudulent I-94 she did not attempt to receive a benefit for which she was not otherwise eligible, and did not shut off a line of inquiry relevant to her eligibility. The applicant is eligible to adjust status under section 245(i) of the Act based on the filing date of the approved Petition for Alien Relative and the applicant's true date of entry into the United States, which was before December 21, 2000.²

² The applicant last entered the United States on September 29, 2000 and was therefore physically present in the United States on December 21, 2000, as required for her to adjust her status under section 245(i) of the Act. The false Form I-94 submitted with the application had an entry date of October 25, 2001.

Thus, the AAO finds that the field office director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is unnecessary and will not be addressed.

ORDER: The appeal is dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary.